

The Gazette of India



EXTRAORDINARY
PART II—Section 1
PUBLISHED BY AUTHORITY

No. 30] NEW DELHI, SATURDAY, JULY 21, 1951

MINISTRY OF LAW

New Delhi, the 21st July, 1951

THE INDIAN COMPANIES (AMENDMENT) ORDINANCE, 1951

No. III of 1951

An Ordinance further to amend the Indian Companies Act,
1913

WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance :—

1. **Short title and commencement.**—(1) This Ordinance may be called the Indian Companies (Amendment) Ordinance, 1951.

(2) It shall come into force at once.

2. **Insertion of new section 86J in Act VII of 1913.**—After section 86I of the Indian Companies Act, 1913 (hereinafter referred to as the principal Act), the following section shall be inserted, namely :—

“ 86J. *Restrictions on amendment of articles relating to appointment of directors.*—In the case of a company not being a company managed by a managing agent, any amendment in the articles of, or any variation in any agreement with, the company relating to the appointment or election of a managing director or a director not liable to retire by rotation shall, notwithstanding anything to the contrary contained in any other provision of this Act or in the articles or agreement, be void unless approved by the Central Government. ”

3. **Insertion of new section 87AA in Act VII of 1913.**—After section 87A of the principal Act, the following section shall be inserted, namely :—

“ 87AA. *Restrictions on extension of term of office of managing agents.*—In the case of a company managed by a managing agent, any amendment in the articles of, or any variation in any agreement with, the company which purports to extend, or has the effect of extending, the term of office of a managing agent holding office as such at the commencement of this Ordinance shall, notwithstanding anything to the contrary contained in any other provision of this Act or in the articles or agreement, be void unless approved by the Central Government. ”

4. Amendment of section 87B, Act VII of 1913.—For clause (c) of section 87B of the principal Act, the following clause shall be substituted, namely :—

“(c) a transfer of his office by a managing agent shall be void, unless approved by the company in general meeting and also by the Central Government ;”.

5. Insertion of new section 87BB in Act VII of 1913—After section 87B of the principal Act, the following section shall be inserted, namely :—

“87BB. *Restrictions on change in the constitution of a managing agent* :

In the case of a company managed by a managing agent which is a firm or a company, no change in the constitution of the managing agent, whether the change is caused by a change in the ownership of the shares held therein or by a change among the partners or board of directors or managers thereof, shall have effect unless approved by the Central Government, and until such approval is obtained, no such firm or company shall be entitled to be the managing agent of the company.

Explanation.—A change in the ownership of shares in a managing agent which is a company caused by the death of any shareholder therein, or a change among the partners of a managing agent which is a firm, or a change in the board of directors or managers of a managing agent which is a company, caused by the death, or retirement by efflux of time, of a partner, director or manager, as the case may be, shall not be deemed to be a change in the constitution of a managing agent within the meaning of this section.”

6. Insertion of new section 87CC in Act VII of 1913.—After section 87C of the principal Act, the following section shall be inserted, namely :—

“87CC. *Restrictions on amendment of articles or agreement relating to appointment or remuneration of managing agents, etc.*—In the case of a company managed by a managing agent, any amendment in the articles of, or any variation in any agreement with, the company—

(a) which relates to the appointment of the managing agent, or

(b) which purports to increase, or has the effect of increasing, the remuneration of the managing agent, managing director or a director not liable to retire by rotation, as the case may be,

shall, notwithstanding anything to the contrary contained in any other provision of this Act or in the articles or agreement, be void, unless approved by the Central Government :

Provided that nothing herein contained shall apply to the remuneration payable to a director for attending the meetings of the board of directors of which he is a member.”

7. Insertion of new sections 153C and 153D in Act VII of 1913.—In Part IV of the principal Act, before section 154 the following heading and sections shall be inserted, namely :—

‘Alternative remedy to winding up in cases of mismanagement or oppression.

153C. Power of court to act when company acts in a prejudicial manner or oppresses any of its members.—(1) Without prejudice to any other action that may be taken, whether in pursuance of this Act or any other law for the time being in force, any member of a company who complains that the affairs of the company are being conducted—

- (a) in a manner prejudicial to the interests of the company, or
- (b) in a manner oppressive to some part of the members (including himself).

may make an application to the court for an order under this section.

(2) No application under sub-section (1) shall be made by any member, unless—

(a) in the case of a company having a share capital, the member complaining—

(i) has obtained the consent of not less than one hundred in number of the members of the company or not less than one-tenth in number of the members, whichever is less, or

(ii) holds not less than one-tenth of the issued share capital of the company upon which all calls and other sums due have been paid: and

(b) in the case of a company not having a share capital the member complaining has obtained the consent of not less than one-fifth in number of the members,

and the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), shall apply to any such application as it applies to any suit within the meaning of that rule.

(3) If on any such application the court is of opinion—

(a) that the company's affairs are being conducted as aforesaid, and

(b) that to wind up the company would unfairly and materially prejudice the interests of the company or any of its members, but otherwise the facts would justify the making of a winding-up order on the ground that it is just and equitable that the company should be wound-up,

the court may, with a view to bringing to an end the matters complained of, make such order in relation thereto as it thinks fit.

(4) Without prejudice to the generality of the powers vested in a court under sub-section (3), any order made under that sub-section may provide for—

(a) the regulation of the conduct of the company's affairs in future ;

(b) the purchase of the shares or interests of any members of the company by other members thereof or by the company ,

(c) in the case of a purchase of shares or interests by the company being a company having a share capital, for the reduction accordingly of the company's capital or otherwise ,

(d) for the termination of any agreement, howsoever arrived at, between the company and its managing agent, managing director or any of its other directors.

(5) Where an order under this section makes any alteration in, or addition to, the memorandum or articles of any company, then notwithstanding anything contained in any other provision of this Act, but subject to the provisions of the order, the company concerned shall not have power without the leave of the court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order, but subject to the foregoing provisions of this sub-section the alterations or additions made by the order shall have the same effect as if duly made by a resolution of the company, and the provisions of this Act shall apply to the memorandum or articles as so altered or added to accordingly.

(6) A certified copy of every order under this section altering or adding to, or giving leave to alter or add to, the memorandum or articles of any company shall, within fifteen days after the making thereof, be delivered by the company to the registrar for registration, and if a company makes default in complying with the provisions of this sub-section, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

(7) It shall be lawful for the court, upon the application of any petitioner or of any respondent to a petition under this section and upon such terms as to the court appears just and equitable, to make any such interim order as it thinks fit for regulating the conduct of the affairs of the company pending the making of a final order in relation to the application.

(8) In any case in which the court makes an order terminating any agreement between the company and its managing agent or managing director or any of its other directors, as the case may be, the court may, if it appears to it that the managing agent, managing director or other director, as the case may be, has misapplied or retained or become liable or accountable for any money or property of the company or has been guilty of any misfeasance or breach of trust in relation to the company, award by way of damages against the managing agent, managing director or other director such sum as it thinks fit, and the provisions of sections 235 and 236 of this Act shall apply as if the company were in the course of being wound-up and proceedings under section 235 had been commenced by a contributory within the time limited by that section.

Explanation.—For the purposes of this section, any material change after the commencement of the Indian Companies (Amendment) Ordinance, 1951, in the control of a company, or in the case of a company having a managing agent in the composition of the managing agent which is a firm or in the control of the managing agent which is a company, may be deemed by the court to be a fact which would justify the making of a winding-up order on the ground that it would be just and equitable that the company should be wound-up :

Provided that the court is satisfied that by reason of the change the interests of the company or any of its members are or are likely to be unfairly and materially prejudiced.

153D. *Effect of termination of managing agency agreement, etc.*—(1) Where an agreement between a company and its managing agent, managing director or other director, as the case may be, is terminated by virtue of an order made under sub-section (8) of section 153C,—

(a) the order shall not give rise to any claim on the part of the managing agent, managing director or other director, as the case may be, for damages or for compensation for loss of office or otherwise, whether the claim is made in pursuance of the agreement or otherwise, and

(b) no managing agent, managing director or other director or any associate of such managing agent shall, without the leave of the court, be appointed or reappointed or be entitled to act as the managing agent, managing director or director or manager of the company for a period of five years from the date of the order.

(2) If any person acts as the managing agent or manager of a company in contravention of the provisions of this section, such person, and in the case of a company each of its directors, shall be punishable with imprisonment for a

term which may extend to one year or with fine which may extend to five thousand rupees or with both.

(3) No court shall grant leave under this section unless notice of the intention to apply for such leave has been served on the Central Government in the manner specified in section 80 of the Code of Civil Procedure, 1908 (Act V of 1908) in respect of suits against the Government.

Explanation.—In this section, the expression “associate of a managing agent” means—

- (a) any firm of which the managing agent is a partner ;
- (b) any partner of the managing agent ;
- (c) any private company, of which the managing agent is a member, director, managing agent or manager ; and
- (d) in the case of a managing agent which is a company, any subsidiary company of the managing agent and any director, managing agent or manager of the managing agent or any subsidiary company of the managing agent.’

8. Insertion of new section 289B in Act VII of 1913.—After section 289A of the principal Act, the following section shall be inserted, namely :—

“289B. *Power of Central Government to appoint advisory commission and to make rules in respect of certain matters.*—(1) For the purpose of advising it in the exercise of its powers under section 86J, section 87AA, clause (c) of section 87B, section 87BB or section 87CC, the Central Government may constitute a commission consisting of not more than three persons with suitable qualifications and appoint one of them to be the chairman thereof.

(2) It shall be the duty of the commission to inquire into and advise the Central Government on all applications for approval made to the Central Government under any of the sections referred to in sub-section (1).

(3) Every application for approval made to the Central Government under any of the sections referred to in sub-section (1) shall be in such form as may be prescribed.

(4) For the purpose of making any inquiry under this section the commission may—

(a) require the production before it of any books or other documents in the possession of the company relating to any matter under inquiry;

(b) call for any further information or explanation if the commission is of opinion that such information or explanation is necessary in order that the books or other documents produced before it may afford full particulars of the matter to which they purport to relate;

(c) with such assistants as it thinks necessary, inspect any books or other documents so produced and make copies thereof or take extracts therefrom;

(d) examine on oath a managing director or any other officer of the company relating to any matter under inquiry and administer an oath accordingly to the person for the purpose.

(5) If any person refuses or neglects to produce any book or other document in his possession or custody which he is required to produce under this section or to answer any question put to him relating to any matter under inquiry, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

(6) No suit or other legal proceeding shall lie against the Central Government, the commission or any member of the commission in respect of anything which is in good faith done or intended to be done in pursuance of this section or the sections referred to in sub-section (1) or of any rules or orders made thereunder."

RAJENDRA PRASAD,
President.

K. V. K. SUNDARAM,
Secy. to the Govt. of India